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MAGISTRATES' LAW.

[PUBLISHED BY REQUEST.]

AN ACT defining the powers and duties of Justices of the Peace.

Sec. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That the justices of the peace respectively in each county in this state shall have jurisdiction over all debts and demands of one hundred dollars, where the amount or balance is due on any contract, specialty, note or agreement, or for goods, wares and merchandise sold and delivered, or for work or labor done, or for any specific article or articles, whether due by obligation, note or assumpsit, or on account of any sum or sums of money not exceeding one hundred dollars. *Provided nevertheless,* That at any time previous to judgment, either plaintiff or defendant may signify his intention to submit the case to the decision of a jury: *Provided,* The matter in controversy exceed twenty dollars. And it shall be the duty of the justice to issue his writ to the constable of the township, commanding him to cause a jury of six (or twelve if a less number should be objected to by either of the parties) *to wit*, able householders to be empanelled as soon as may be, adjoining the cause for one, two, or three days for that purpose if necessary, and such jury shall be empanelled and sworn in the same manner, and be entitled to the same fees that are or may be provided by law for jurors in the circuit court.

Sec. 2. *Be it further enacted,* That the first process which shall be issued against any defendant, by virtue of this act, shall be a summons or warrant, in nature of a *capias ad respondendum*, as the case may require: and the summons shall be used in every case under this act, where the defendant is a freeholder within the county, and resides therein; and the summons to be issued as aforesaid, shall specify a certain time not less than six nor more than ten days from the date of such process; and also a certain place at which the defendant is to appear; and shall be served at least three days before the time of appearance mentioned therein, by reading the same to the defendant, and serving him or her with a copy thereof, if required, when the defendant may be found, but if he or she cannot be found then by leaving a copy thereof at his or her house, or place of abode, in presence of some person of the family, of the age of ten years, or upwards, who shall be informed of the contents thereof; and the constable serving such summons, shall, on the oath of his office, endorse thereon the time and manner of his executing the same, and shall subscribe his name thereto: *Provided always,* That in every case in which a summons is made the proper process, by this act, if it shall be sufficiently proved on oath, to the satisfaction of the justice, that the plaintiff will be in danger of losing his or her demand, unless the defendant be arrested, it shall be the duty of the justice to issue a warrant, in the nature of a *capias*, any thing herein contained to the contrary notwithstanding.

Sec. 3. *Be it further enacted,* That if the defendant does not appear at the time and place expressed in such summons, and it shall be found, by the return thereon endorsed, that the summons was duly served, and no sufficient reason be assigned to the justice why the defendant does not appear; then the said justice may proceed to hear and determine such cause, in the absence of the said defendant.

Sec. 4. *Be it further enacted,* That the warrant in nature of a *capias ad respondendum*, shall be used in all cases under this act, in which the defendant is not a freeholder within the county, and the constable serving or executing the same, shall, according to the command thereof, forthwith convey the defendant before the justice who issued the same, and the said justice shall thereupon either cause the defendant to give bail for his or her appearing and abiding the event of the said suit; or on neglect or refusal to give such bail, shall order the constable to convey him or her to the jail of the county, except as hereinafter provided, there to be kept in custody, until the time appointed for the trial of the cause, which shall not exceed three days from the day of the return of the warrant, or the justice may direct the constable to hold the defendant in custody until the plaintiff shall have notice and time to attend and proceed to trial; and the constable who served such warrant shall, on the oath of his office, endorse thereon the execution thereof, and sign his name thereto.

Sec. 5. *Be it further enacted,* That the justice shall endorse on the sum-

mons or warrant, before the same is delivered to the constable, the sum demanded by the plaintiff, together with the costs that have accrued, and the defendant shall have the privilege of paying the amount of the said demand, and costs so endorsed without further proceeding in the cause; and it shall be lawful for the constable to receive the same and receipt therefor; which receipt shall be a complete discharge to the defendant from the said demand and costs; and if the constable shall not pay the money so received to the justice who issued the process, or if he shall not pay the amount of the costs into the hands of the justice, or the debt or demand into the hand of the plaintiff named in such process, within the space of seven days after he may have received the same, then the said constable shall be liable to pay the said plaintiff, or his or her legal representatives, double the amount of the said debt or demand, to be recovered with costs of suit by an action of trespass on the case, in any court having cognizance thereof.

Sec. 6. *Be it further enacted,* That the recognizance of bail to be taken as is above provided, shall be in the following form, to wit:

Township, _____
County, _____.
“Whereas A B, (naming the defendant) hath been arrested, and is in custody, at the suit of C D, (naming the plaintiff) in an action of _____ for the sum (or property to the value) of _____ now, therefore, you O P, (naming the bail) do acknowledge yourself special bail in the said action in the sum of _____ dollars, to be levied upon your goods and chattels, and for want thereof, upon your body, if default be made in the condition of your recognizance, which condition is, that the said A B, (naming the defendant) shall be and appear before _____ (naming the justice) on the _____ day of _____ next, and if judgment be given against him or her, that he or she shall pay the costs and condemnation money, or surrender his or her body in execution. Acknowledged before me _____ one of the justices of the peace in and for the said county of _____ the _____ day of _____ in the year of our Lord one thousand _____.”

And every justice of the peace is hereby empowered to take recognizance, which shall remain with such justice for the benefit of the plaintiff in the suit; and if the defendant does not appear, after such recognizance entered into, at the time and place specified in the said recognizance, and no sufficient reason be assigned to the said justice why he or she does not appear, then the said justice may proceed to hear and determine the cause, in the absence of such defendant; and when the parties to any suit, to be instituted by virtue of this act, shall appear at the time and place appointed for trial, the said justice shall proceed to hear and examine their respective allegations and proofs, and shall thereupon give judgment, with costs of suit, according to the justice and equity of the case, unless he shall think it proper, on application of either party to adjourn the trial; which adjournment shall not be made for a longer period than seven days, when moved for by the plaintiff, nor for a longer period than fourteen days, when moved for by the defendant, except in peculiar cases, where a longer continuance may be necessary for either party to obtain depositions; for which end the said justices are hereby authorized upon good cause shown, to issue a *dedimus*, returnable before himself, at such time thereafter as he may think reasonably necessary.

Sec. 7. *Be it further enacted,* That when parties agree to enter without process, before a justice of the peace, any action herein made recognizable before them, such justice shall enter the same on his docket, and shall proceed to judgment and execution, in the same manner as though a summons or warrant had been issued, served and returned; and in all actions instituted by virtue of the provisions herein contained, in which the plaintiff shall be non-suited, discontinued or withdraw his or her suit, without the consent of the defendant, the said justice shall give judgment for the defendant for the costs which have accrued.

Sec. 8. *Be it further enacted,* That if in any cause instituted as aforesaid, it shall appear at the trial that there is a balance due to the defendant from the plaintiff, then the justice shall enter up judgment against the plaintiff, in favor of the defendant, for the sum so appearing to be due, with costs of suit; and such defendant shall be entitled to execution in the same manner, as though such plaintiff had been defendant in the suit.

Sec. 9. *Be it further enacted,* That the parties in every case arising under this act, shall have the privilege of referring the matter in controversy between them to referees, who shall be chosen and mutually agreed on between them, and who, after having heard the proofs and allegations of the parties, shall make their report in writing to the justice, and the said justice shall receive and file the same, and thereupon enter judgment accordingly.

Sec. 10. *Be it further enacted,* That where judgment shall be given against the plaintiff or defendant under this act, the justice who give such judgment shall grant execution thereupon, returnable to such justice within twenty days, thereafter, commanding the constable to make the debt or damages and costs, of the goods, and chattels of the party, and for want of sufficient goods and chattels whereon to levy and make the same, to take the body of such party, and him or her convey to the common jail of the county; and the sheriff or keeper of such jail is hereby required to receive the person or persons so taken in execution, and him, her or them safely keep until the sum recovered, and the costs of suit, shall be fully paid, and in default of such safe keeping, the said sheriff shall be answerable to the party aggrieved, who shall have the same remedy against him as is provided by law in cases of escapes.—But in case the constable cannot find goods and chattels belonging to the party, against whom such execution hath issued, sufficient to satisfy the judgment, it shall and may be lawful for the party in whose favor such judgment hath been rendered, to apply to the justice for a transcript thereof, whose duty it shall be to grant the same, which being filed in the office of the clerk of the circuit court in the county in which the recovery hath been had; execution may issue thereon according to the rules and practice of the said court; and the amount of the said judgment, together with the costs of such removal, may be levied on the lands and tenements of the party against whom the same hath been rendered: *Provided always,* That no execution shall issue from the circuit court in manner aforesaid, after the party hath been taken in execution, and committed to jail, until he or she shall be discharged from imprisonment under such execution: *And provided also,* That when a judgment shall be obtained against executors or administrators, execution shall issue thereon in the same manner as is issued against them in the courts of record within this state: *Provided also,* That when judgment shall be rendered as aforesaid, against a freeholder, no execution shall issue thereon until the expiration of thirty days, if the judgment be for the sum of six dollars and under, or until the expiration of sixty days for any sum over six dollars and under eighteen dollars, nor until the expiration of ninety days, if the judgment be for the sum of or above eighteen and not exceeding 30 dollars, nor until the expiration of 100 and twenty days if the judgment be for the sum of thirty dollars, and not exceeding sixty dollars, nor until the expiration of 100 and fifty days where the judgment is for the sum of sixty dollars and upwards from the time of rendering such judgment, unless the party in whose favor such judgment hath been rendered, shall make it appear on oath or affirmation, to the satisfaction of the justice, that he or she, is in danger of losing his or her debt, or damages, if such delay of execution be allowed, in which case the said justice shall issue execution forthwith, as is herein above provided, unless the party against whom execution is moved for shall immediately give good and sufficient security to the adverse party, for the payment of the debt or damages and costs, within the space of thirty, sixty, ninety days, or upwards as the case may be: *Provided also,* That if judgment shall be given as aforesaid, against a person who is not a freeholder, such person shall have the execution against him or her respited for the like term of thirty, sixty or ninety days, as the case may be, by entering into a recognizance to the adverse party with one sufficient security, in the nature of special bail, conditioned to deliver the body of the said party, to the sheriff of the county, at or before the expiration of the time so to be allowed, or to satisfy the amount of judgment.

Sec. 11. *Be it further enacted,* That if any defendant who is not a freeholder shall appear at the return of the warrant, or shall appear by consent without process, and procure a good and sufficient freeholder, resident in the county, to join with him or her, in a confession of judgment to the adverse party, with costs, then such defendant shall be entitled to all the benefits and privileges which any freeholder is entitled to by virtue of this act.

Sec. 12. *Be it further enacted,* That it shall be the duty of the justice to make up and tax a bill of costs, in every action instituted before him, according to the provisions of the law, ascertaining the fees to be allowed in such cases, setting down in said bill each item separately and distinctly, a true copy of which bill, certified and signed by the said justice, shall be delivered to the party against whom judgment hath been entered, and left at his or her usual place of abode, before said party shall be called upon to discharge or satisfy said judgment, and every justice who shall issue an execution on any judgment, or receive the amount thereof, without having previously tendered to the party, against whom such judgment hath been rendered, a certified bill of the costs as above

provided, or without having delivered the same to the constable, to be left at his or her usual place of abode, and every justice who shall insert in said bill of costs any charge for services not actually performed, than is allowed by law, shall forfeit and pay to the party against whom such bill hath been made and taxed, a sum of money equal to the amount of the costs taxed in the said suit; which sum shall and may be recovered with costs, before any justice of the peace within the county, and the jurisdiction of every justice, for the purpose of prosecuting for, and recovering such forfeiture, shall be co-extensive with the boundaries of the county, any thing herein contained to the contrary notwithstanding: *Provided always,* That if the said forfeiture shall exceed the sum of fifty dollars, then the sum may be recoverable by action of debt; in any court of record within this state.

Sec. 13. *And be it further enacted,* That no justice of the peace, by virtue of the provisions contained in this act, shall institute or sustain two, or more actions or suits between the same parties for demands which are of such a nature as may be consolidated in one action, under the penalty of eighteen dollars, to be recovered for the use of, and in the name of any person who shall first sue for the same, in the same manner as is provided in the fifth section of this act; and every judgment recovered against any defendant or defendants, by virtue of the provisions herein contained, may be pleaded in bar, and such plea may be received in any court within this state as a complete bar to any subsequent action or suit, instituted by the same plaintiff or plaintiffs, against the same defendant or defendants for any demand due, and owing from the same defendant or defendants to the same plaintiff or plaintiffs, at the time of instituting the action in which such judgment shall have been obtained, if the demand on such subsequent action shall have been commenced, shall be of such a nature as might have been consolidated and joined in one action, and demands secured by writings under seal may be consolidated with demands secured by writings without seal.

Sec. 14. *Be it further enacted,* That this act shall [not] be construed or understood to extend to, or embrace, nor shall any thing herein contained extend to embrace any action of debt on bonds for the performance of covenants, actions of replevin, or upon any real contract, actions of trespass on the case, for trover and conversion, or slander, or actions of trespass vi et armis, or actions wherein the title of lands shall in any wise come in question.

Sec. 15. *Be it further enacted,* That the justices of the peace who have been or shall be appointed and commissioned, in and for the several counties in this state that now exist and in such counties as may hereafter be erected, shall jointly or severally, have full power to keep, and cause to be kept all laws at present in force, or that may hereafter be made for the conservation of the peace, and for the good government of the citizens and inhabitants of this state within the said counties respectively, according to the force, form and effect of all such laws, of which they now have or hereafter may have jurisdiction; and to apprehend, imprison and punish all persons offending against those laws or any of them in the said respective counties, in such manner as, according to those laws, shall be right and proper, and to cause to come before them, or any of them, all persons who shall break the peace or have used or shall use threats against any citizen or inhabitant or person within this state, and under the protection of the laws, concerning his or her bodies or the firing of his or her house, barn or other buildings, or the unlawful destruction or injury of his or her property; and also such persons, who are not of good fame, where they are found to enter into recognizance, with sufficient security for the peace or their good behaviour towards the people or inhabitants of this state, and all those under the protection of its laws; and if the persons against whom such proceedings are directed, shall fail to enter into such recognizance, it shall be the duty of the justice of the peace to cause him or her to be safely kept in prison and he or she shall do the same. And further the said justices shall have power to perform, and it shall be their duty to execute, all such matters, acts and things as by law appertain to their office, as are or shall be enjoined on them, and committed to their charge and execution.

Sec. 16. *And be it further enacted,* That every justice of the peace, who shall take any recognizance for keeping the peace or good behaviour, shall also make it a condition in said recognizance that he, she or they, therein bound, shall appear on the first day of the next succeeding circuit court to be holden in the county, in which the case shall happen, and continue to abide there till discharged by said court. It shall also be the duty of the said justice to recognize all witnesses to appear at said court to testify against the offender; and it shall be

the duty of such justice to return the recognizances thus required to be taken by him to said court, which shall direct the parties bound to be called, and if they or any of them fail to appear, their default shall be entered and there recorded, and the recognizances shall be prosecuted to effect. If however, the party bound shall appear, the said court shall hear the evidence and may discharge or continue the recognizance as shall appear to be consistent with law.

Sec. 17. *Be it further enacted,* That it shall be lawful for any justice of the peace, upon oath being made before him, that any person hath committed, or that there are just grounds to suspect that he or she hath committed any criminal offence within his county, to issue his warrant to arrest the person so charged and to inquire into said charge and commit the person so charged to jail, or bail, or discharge him, according to the proof that may be adduced and to the law arising thereupon; *Provided however,* That said justices shall have no power to admit to bail or mainprize, any person or persons charged with treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, or suspicion thereof, or with any crime punishable with death, or burning in the hand or elsewhere. And in all cases where the said justices shall admit to bail or mainprize, they shall recognize the party bound, to appear on the first day of the next succeeding session of the circuit court in the county in which the transaction may happen, there to remain until discharged by said court, and in all cases where the justices of the peace shall either commit the person or persons charged to jail, or admit him or her to bail or mainprize, the said justices shall recognize the witnesses to appear at the time aforesaid, and at the court aforesaid to give testimony in the case whenever thereto required.

Sec. 18. *Be it further enacted,* That in case any person against whom a warrant shall be issued by any justice or justices of the peace of any county of this state for any offence therein committed or done, shall escape, go into, reside or be in any other county out of the jurisdiction of the justice or justices granting such warrant as aforesaid, it shall and may be lawful for, and it is hereby declared to be the duty of any justice or justices of the peace of the county, where such person shall escape, go into, reside or be, upon proof being made upon oath or affirmation of the hand writing of the justice or justices granting such warrant, to endorse his or their names on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant and to all other persons, to whom such warrant was originally directed, to execute such warrant in such other county out of the jurisdiction of the justice or justices granting such warrant as aforesaid, and to apprehend and carry such offender before the justice or justices who endorsed such warrant, or some other justice or justices of such other county where such warrant was endorsed, and in case the offence for which the offender shall be apprehended as aforesaid shall be bailable in law by a justice of the peace, and such offender shall be ready and willing to give bail for his appearance at the next succeeding session of the circuit court to be holden for the county in which the offence was committed, such justice or justices of the peace of such other county, before whom such offender shall be brought, shall and may take bail of such offender for his or her appearance at the next succeeding session of the circuit court to be held in and for the county where such offence was committed, in the same manner as the justices of the peace of the proper county might have done, and the justices of the peace of such other county so taking bail as aforesaid shall deliver the recognizance of bail, and all other proceedings relating to said offender and offence, before him had, to the constable or other person or persons so apprehending said offender as aforesaid, who is and are hereby required to receive and deliver over as soon as practicable, such recognizance, and other proceedings to the clerk of the circuit court in the county where the offender may be required to appear by virtue of such recognizance; and such recognizance and other proceedings shall be as good and effectual in law, to all intents and purposes, and of the force and validity as if the same had been entered into, taken and acknowledged, before a justice or justices of the peace, in and for the proper county where the offence was committed. And the same proceedings shall be had thereon, and in case such constable or other person to whom such recognizance or other proceedings, shall be delivered as aforesaid, shall refuse or neglect to deliver over the same to the clerk of such court as aforesaid where the offender is required to appear by virtue of such recognizance, such constable or other person shall forfeit thirty dollars to be recovered against him with costs by action of debt, bill, plaint, or information, in any court of record having cognizance thereof, by any person or persons, who will prosecute or sue for the same. And in case